



The Elder Abuse Landscape as it Stands

Elder abuse is a widespread problem that crosses social, cultural, and economic boundaries. It manifests in a variety of distinct and related ways and can be defined as “a single or repeated act, or lack of appropriate action, occurring within a relationship where there is an expectation of trust, which causes harm or distress to an older person.”ⁱ Abuse can be psychological, physical, sexual, financial, and neglect. Victims are likely to experience multiple types of abuse at the same time. Financial abuse, for instance, can be the product of psychological or physical threat.ⁱⁱ

CARP had called for and supported the 2012 federal measure to introduce aggravated sentencing for elder abuse convictions (Bill C-36). We are happy to announce that Bill C-36 has since received Royal Assent and is now law. It represents a major first step in concerted legislative and community action to protect vulnerable seniors from elder abuse.

Bill C-36 introduces the first explicit reference to elder abuse contained in the Criminal Code. While there is no specific crime of “elder abuse” – it will now be taken into consideration when sentencing crimes where an older person is victimized.

However, there is much room for improvement. Canadian law is not grounded in a single definition of elder abuse or neglect. Some laws that apply to elder abuse do not define it. Although criminal law is federal – laws that apply to health, social services and adult guardianship are provincial and territorial. Hence the patchwork of complicated and unequal protective measures we currently have in place.

Protections, duties and mechanisms for reporting can be unclear and the few resources available to victims are difficult to find and to navigate. In most jurisdictions that require mandatory reporting, the duty to report is not to the

police or law enforcement agency but to a bureaucrat somewhere within the community services or health-care system.

Lack of clear accountability can lead to improper administration of penalties and deterrents. What’s worse, it can lead to victims falling through the cracks and perpetrators getting away with criminal acts of abuse against vulnerable persons.

CARP has gone on record, calling for a comprehensive strategy that includes a single access point offering information to the public, more resources for victims and a more comprehensive approach to intervention that includes clear accountability for case management and a co-ordinated response involving law enforcement, social services and the appropriate health authorities.

Great Progress was made in 2012 but we Desperately Need to Press on in 2013

Following a particularly horrific elder abuse case in early March 2011, CARP issued an open letter to the Ministers of Justice and Seniors warning of the urgent need to take action.

“Sympathy and acknowledgement [from the Ministers] of the scourge of elder abuse is welcome but action is better. We already have models in society to deal with abuse of vulnerable people. And other jurisdictions may have something to teach us. The federal government must review its own legislation and the protocols and resources necessary to better detect, investigate and prosecute cases of elder abuse. If they are not adequate, they should be changed”, said Susan Eng, VP Advocacy for CARP

An intense year of pressing the Federal Government for action led to election promises in the 2011 federal election and a flurry of activity in early 2012, beginning with Minister of State for Seniors Alice Wong’s roundtable on elder abuse in late January and

culminating in the announcement and passing of Bill C-36.

A Confusing Patchwork of Federal and Provincial Laws Surrounding Elder Abuse and Mandatory Reporting

The Canadian criminal law does not mandate the reporting of elder abuse on a national basis and the *Criminal Code* of Canada does not explicitly define “elder abuse” as a discrete crime. It therefore does not provide any legal mechanism or requirement for the reporting of abuse.

There are several provisions in the Criminal Code that may apply in cases of elder abuse. For example, to name a few:

- failure to provide the necessities of life – s.215
- criminal negligence causing bodily harm or death – ss. 220-221
- unlawfully causing bodily harm – s.269
- manslaughter – ss.234, 236
- murder – ss. 229-231, 235
- counselling suicide – s.241
- assault – ss.265-268
- sexual assault – ss.271-273
- forcible confinement – s.279 (2)
- theft – ss.323, 328-332, 334
- criminal breach of trust – s.336
- extortion – s.346
- forgery – s.366
- fraud – s. 380 (1)
- intimidation – s.423

But Federal Criminal laws are obviously not the only laws that apply to elder abuse. Laws that apply to health, social services and adult guardianship are provincial and territorial. No law that applies to abuse or neglect applies exclusively to people 65+. Each province and territory takes a unique approach. Some provinces have legislation that creates obligations to respond, or “duty to report” to the abuse of adults receiving services from a care facility.

Despite the absence of any **federal** mandatory reporting of elder abuse, some Canadian provinces have adopted provincial mandatory reporting laws. Some provinces, such as Nova Scotia have adult protection legislation that call for the mandatory reporting of the abuse of elderly or vulnerable adults. Most other provinces and territories, with some exceptions, require by law or government policy the mandatory reporting of the abuse of residents of nursing homes and other similar care facilities. In most cases, the duty to report is to health or social services rather than to law enforcement.

Obligations, relevant bodies and statutes are different in every province: Newfoundland has neglect legislation.

Québec addresses elder abuse in its Charter of Human Rights and Freedoms. Some laws apply to adults at risk; other laws apply only when abuse or neglect has already happened.

Most provinces have several statutes that are relevant to elder abuse cases: most commonly they are Acts that pertain to Long Term Care Homes, Adult Protective Legislation and Freedom of Information and Privacy Acts.

To make things even more complex – the relative values applicable to the Acts vary from one jurisdiction to another - for example, the value placed on intervening to protect the vulnerable adult versus respecting the autonomy and independence of someone who might be in need of protection

In most jurisdictions a number of laws apply to abuse and neglect. The overall options and obligations to respond to or report elder abuse and neglect depend on the relationship between the various laws and the specific circumstances of abuse or neglect involved in each case.

The pan-Canadian legal framework is extremely complex for advocates and legal professionals to navigate. This should be sufficient to illustrate how difficult it can be for a vulnerable person to understand their rights and the legal remedies/resources available to them. A Review needs to be undertaken to determine how law, obligations and protections might be simplified or made to be more consistent from one jurisdiction to another and to consider whether a new Criminal Offence classification is required for elder abuse.

Elder Abuse in Institutional Settings

The proportion of older Canadians living in special care facilities increases with age – they tend to be older, frailer and require more assistance, and

increasingly with a diagnosis of dementia. The proportion of seniors living alone and particularly of women living alone also increases with age. As such, the risk profile of seniors living in institutions is arguably higher than that of seniors who are not living in residential care.

In 2011, 352,205 seniors aged 65 and over, or 7.1% of all seniors, lived in a collective dwelling that focused on special care to seniors. The prevalence of seniors living in special care facilities, such as nursing homes, chronic care and long-term care hospitals and residences for senior citizens, increased with age. Among the age group 65 to 69, about 1% lived in special care facilities in 2011; among seniors aged 85 and over, the proportion was 29.6%.

Among the age group 85 and over, 86.9% of seniors in residences for senior citizens were living alone. The share of women in this age group living alone (92.2%) was higher than for men (70.6%).ⁱⁱⁱ

There has never been a major academic study of institutional elder abuse prevalence in Canada^{iv}

In the 1990s College of Nurses of Ontario conducted a survey of nursing staff found that:

- 20% reported witnessing abuse of residents in long-term care settings.
- 31% reported witnessing rough handling of patients/residents
- 28% reported witnessing workers yelling and swearing at patients/residents
- 28% reported witnessing embarrassing comments being said to patients/residents
- 10% reported witnessing other staff hitting or shoving patients/residents

In 2013, following a W5 investigation into LTC facility abuse and Access to Information Act requests, enough incident reports were collected to provide rough estimates. The results were sobering.

Of the 25,531 reported and recorded incidents of elder abuse in institutional settings, approximately 10,000 of them were resident-on-resident altercations.^v

Information and statistics about the prevalence of abuse in institutional settings is so rare and difficult to obtain because there are no national definitions, relevant legislations or standards. We should be tracking this data nation-wide. The difficulty might lie in the complicated web of relevant legislation, and the lack of a clearly defined and common

agency to handle complaints and record keeping in each jurisdiction.

No Justice Without Clear Accountability and Liability

Cases like 68-year-old Frank Piccolo's illustrate the need for clear legal accountability and liability in cases of resident on resident abuse in institutions.

Mr. Piccolo was attacked by a woman who lived across the hall from him; she suffered from dementia. The evening she assaulted Mr. Piccolo she attacked him on two separate occasions – she first entered his room and hit him, scratching him and drawing blood. Staff entered the room and physically removed her. But hours later, she was left unattended again and promptly returned to Mr. Piccolo's room, this time bludgeoning him with a sharp object until his room "looked like the set of a horror film". Photos of the crime scene show abundant blood splatter covering the walls and furniture. Mr. Piccolo suffering almost one hundred gashes and was beaten to a bloody pulp. The gruesome attack would have gone on for a long time before anyone came to help Mr. Piccolo. His family says he never really recovered and died months later.

When the Piccolo family tried to involve the police saying it was a negligence case they were told that this was not a police investigation and that it was the Ministry of Long Term Care's (MOHLTC) purview to investigate these cases.

The Ministry of Long Term Care investigation found that the Home had failed "in its duty to protect" Frank Piccolo. **They found that there were 8 separate assaults on file for this particular resident and that the staff would have therefore known how dangerous she was. Furthermore, they found that she should have been supervised at all times and kept**

in a segregated area, away from non-violent residents.

But, no one at the facility will be held criminally liable because MOHLTC has no real enforcement powers, they can only order improvements at the facility, take over the home or shut it down. In this case, they ordered improvements on procedure. A man is dead and his family will never get justice. This achieves neither justice for the family nor does it provide an adequate deterrent to facilities and their staff.

What Protections SHOULD be included in LTC Acts?

Institutional Care Legislation should anticipate all the ways facilities need to provide a safe environment for residents. It should contain a strong statement of principles that support the right of long-term care residents to safe and secure surroundings free of abuse and neglect

It should lay out requirements for screening, orientation and training of staff and volunteers; the development of zero-tolerance policies for abuse and neglect; and policies on how to identify and deal with behaviours that may lead to resident-on-resident violence. It should contain a scheme of mandatory reporting of abuse and neglect and provide protection for whistle-blowers.

And most importantly, it should outline the obligation for facilities to involve law enforcement, health services and social services, preferably in the form of a joint investigation unit with full enforcement powers when a crime has taken place – including criminal negligence.

Prevalence of Elder Abuse

CARP member polling shows that approximately 10% of older Canadians experience some form of abuse, which is consistent with academic and Statistics Canada research.^{vi} Just fewer than one-in-ten CARP members claim to have suffered elder abuse whereas almost 30% of CARP members know of someone who is or has been abused.^{vii}

Based on the current population of 5.2 million Canadians 65 and over, potentially 520,000 people confront elder abuse in Canada.^{viii} In 10 years, it is estimated that the 65-plus population will grow to 7.9 million and if nothing is done to reduce the incidence of abuse, approximately 790,000 seniors may become victims of elder abuse.

While 10 percent of all Canadians over 65 experience one or more type of abuse, evidence from the UK suggests that vulnerable seniors, defined as those who are dependant on others for care or those who suffer from some type of disability, suffer much higher rates of abuse. Twenty-five percent of such vulnerable seniors suffer abuse.^{ix}

Senior victims of violence, by age group and accused to victim relationship, 2009



CARP Member Polls

Research and awareness campaigns can certainly play a role in bringing elder abuse into public attention, but CARP members favour proactive investigation and prosecution as means to ending elder abuse. Almost 25% of members polled think that specialized investigation and prosecution teams working with police is the best solution while another 25% of CARP members want to see Elder Protection Agencies in every province, as there currently is in each US State.^x Even when elder abuse cases are discovered, they are notoriously difficult to prosecute and often result in what many see as insufficient deterrence. The federal government's promise to amend the criminal code to add increased sentencing for convicted perpetrators of elder abuse is a substantial step in the right direction of deterrence and justice. The vast majority of CARP members (95%) believe that exacerbated sentencing is crucial to combating elder abuse. Forty-two percent of members think that increasing sentencing measures will raise awareness of elder abuse while 20% think that it will reduce incidence of abuse.^{xi}

Punishing Financial Abuse

Financial abuse is the most prevalent type of abuse reported by CARP members. When asked what is the most effective way of punishing financial elder abuse, our members expressed the following:

- 34% of members favour asset stripping and wage garnishing to repay investors.
- 17% of members favour stiffer sentences.

- 16% of members favour mandatory jail time.
- 14.2% of members favour high profile prosecution.

Self-Protective Measures

Elder abuse is a crime requiring government action. Still, CARP members think that there are ways that individuals can protect themselves from abuse:

- 32.6% of members think that the best way an individual can guard against financial abuse is to never divulge personal information to strangers or over the phone
- 19.5% of members think that individuals can attain more knowledge about investment risk tolerance and investment practices
- 13% of members think that individuals can seek third party advice when dealing with financial matters with family
- 12.3% of members think that individuals can perform due diligence before hiring caregivers and advisors.

What is IMMEDIATELY Required...

One of the major Federal Government initiatives vis-à-vis elder abuse has been a large and expensive awareness campaign. The Royal Assent of Bill C-36 continued to create buzz and expand awareness of elder abuse. Awareness, however, generates demand for services, which in turn, requires a supporting infrastructure. The status quo is that neither the infrastructure nor services are in place to meet the demand that the government has created by raising the profile of this issue.

First and foremost, there needs to be a National elder abuse hotline that can point people to the limited and disparate resources that are available in their communities because otherwise, those resources are difficult to find – especially for seniors who are not web savvy. In some provinces, 211 has partnered with regional elder abuse prevention agencies to provide a single access number but national coverage does not yet exist.

Secondly, there is a desperate need for elder shelters. There are less than a handful of shelters specifically for older Canadians. The model exists for abused women and has proven to be successful. Although this will require an initial capital injection it will take pressure off the healthcare system, which currently houses seniors in acute care beds. This is both expensive and unacceptable from a human cost perspective.

Designate and fund an elder protection agency with an elder abuse prevention and response mandate, accountable for case management and coordination of integrated response

strategy with adult protective services/elder abuse workers, criminal justice professionals (law enforcement, prosecutors and court personnel), health care professionals (doctors, nurses, PSWs, therapeutic, LTC, community based, inpatient and outpatient), domestic abuse and sexual assault advocates (including hotlines, peer groups, volunteers, counselors, shelter workers).

Perspective matters. That's why "World Elder Abuse Awareness Day" should be renamed "the Day to End Elder Abuse".

CARP Recommendations

CARP is calling for a comprehensive approach to punish the most egregious manifestations of elder abuse but also to prevent the abuse from occurring in the first place. CARP recommends the following:

- 1. Elder Abuse Hot Line** – A single point of first contact: 911 or a 1-800 line – widely known across the country, with the capacity to re-direct to local service agencies, and sensitive to cultural and linguistic needs.
- 2. Duty to Report** reflects social responsibility. There must be clear guidelines for action and intervention, protection and the professional investigative capacity to respond to such reporting.
- 3. Added Caregiver Support** – Greater support for the 2.7 million Canadians now caring for loved ones at home by providing targeted financial support along with training and clinical support.
- 4. Specialized Investigative Support and designated elder protection agency or task force:** a multi-disciplinary team approach to investigation, with full/appropriate enforcement powers, centralized case management as well

as a team approach to helping and healing the victim(s).

5. Federal/Provincial Legislative Review – common standards, vocabulary, legislation and equal protections, **New Criminal Offence of Elder Abuse – if warranted following a review.**

ⁱ Definition developed by Action on Elder Abuse in the United Kingdom and cited in *World Report on Violence and Health, World Health Organization, (2002)*.

ⁱⁱ Sev'er, Aysan. "More than wife abuse that has gone old: A conceptual model for violence against the aged in Canada and the US." University of Toronto Department of Sociology, 2008. Archived at https://tspace.library.utoronto.ca/bitstream/1807/17675/1/morethan_wifeabuse.pdf

ⁱⁱⁱ Census 2011, The Living Arrangements of Seniors

^{iv} There is consensus with regards to this in academic circles with expertise in this field. Notably Prof. Lynn McDonald and her team of researchers at the University of Toronto's Institute for Life Course and Aging.

^v W5: A Groundbreaking national nursing home abuse investigation: <http://www.ctvnews.ca/w5/w5-a-ground-breaking-national-nursing-home-abuse-investigation-1.1149144>

-uncovers-high-rate-of-elder-abuse-those-with-caregivers-most-at-risk/

^x CARP Member Poll, archived at http://www.imakenews.com/carp/index000568065.cfm&XXDESXXshow_votes=T&XXDESXXuser=carp

^{xi} CARP Member Poll, archived at http://www.imakenews.com/carp/index000568065.cfm&XXDESXXshow_votes=T&XXDESXXuser=carp